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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 ANTWONE STOKES,
12 Plaintiff,

13 v.

14 SHERIFF ALEX VILLANUEVA,
15 Defendant.
16
17

NO. CV 22-4077-ODW (AGR)

**ORDER DISMISSING
COMPLAINT WITH LEAVE TO
AMEND**

18 I.

19 **BACKGROUND**

20 On June 13, 2022, Plaintiff, proceeding *pro se* and *in forma pauperis*, filed
21 a civil rights complaint under 42 U.S.C. § 1983 against Defendant Sheriff
22 Villanueva in his individual capacity.¹ (Dkt. No. 1.)

23 Defendant filed a motion to dismiss the complaint. (Dkt. No. 10.) The
24 magistrate judge granted two requests for extensions of time to file an opposition.
25 (Dkt. Nos. 14, 16.) Plaintiff has notified the court that he is in the process of
26 retaining counsel, who has advised him that the motion to dismiss is the result of
27

28 ¹ Defendant argues that the complaint does not state a claim against Sheriff Villanueva in his official capacity. The complaint names Sheriff Villanueva only in his individual capacity. (Dkt. No. 1 at 3.) Therefore, the court does not address Defendant's arguments that Plaintiff does not state an official capacity claim.

1 the way he worded the complaint. Plaintiff seeks additional time to amend the
 2 complaint. (Dkt. No. 18.) The court therefore addresses Defendant's motion
 3 regarding the deficiencies in the existing complaint.

4 For the reasons stated below, the court dismisses the complaint with leave
 5 to file a First Amended Complaint.

6 To survive dismissal, "a complaint must contain sufficient factual matter,
 7 accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft*
 8 *v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). "A claim has facial
 9 plausibility when the plaintiff pleads factual content that allows the court to draw
 10 the reasonable inference that the defendant is liable for the misconduct alleged.
 11 The plausibility standard is not akin to a 'probability requirement,' but it asks for
 12 more than a sheer possibility that a defendant has acted unlawfully." *Id.* (citations
 13 omitted).

14 A *pro se* complaint is to be liberally construed. *Erickson v. Pardus*, 551
 15 U.S. 89, 94 (2007) (per curiam). Before dismissing a *pro se* civil rights complaint
 16 for failure to state a claim, the plaintiff should be given a statement of the
 17 complaint's deficiencies and an opportunity to cure them unless it is clear the
 18 deficiencies cannot be cured by amendment. *Eldridge v. Block*, 832 F.2d 1132,
 19 1135-36 (9th Cir. 1987).

20 II.

21 ALLEGATIONS OF COMPLAINT

22 The complaint alleges that Sheriff Villanueva's "poor training" of deputies
 23 directly led to the following constitutional violations. Plaintiff has mental health
 24 problems. (Compl. at 9.)² On May 14, 2021, Plaintiff was in general population.
 25 After realizing his life was in danger, Plaintiff requested protective custody but
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 28 ² Page citations are to the page numbers assigned by CM/ECF in the header of the document.

1 was told it was not available due to the coronavirus. On July 25, 2021, the
 2 Inmate Reception Center (IRC) violated Plaintiff's due process rights and acted
 3 with deliberate indifference by not properly processing him as a protective
 4 custody inmate. Plaintiff was stabbed 13 times in his head, back, torso and ears
 5 by eleven inmates while housed at the North County Correctional Facility
 6 ("NCCF") and was treated at USC hospital. (Compl. at 5, 7.) In September 2021,
 7 deputies escorted Plaintiff, who was shackled at his feet and wrist, to medical at
 8 Men's Central Jail. The deputies slammed Plaintiff to the ground and dragged,
 9 punched and kicked him. (*Id.* at 7.) Plaintiff was transported to Twin Towers
 10 where an officer placed a finger in his anal cavity. (*Id.* at 7-8.) Plaintiff was told
 11 he would be sorry if he filed a complaint but he filed grievances anyway. He was
 12 called racist names by the deputies. (*Id.* at 8.)

13 Plaintiff alleges the Sheriff's failure to train resulted in the deputies'
 14 retaliation, deliberate indifference and failure to protect in violation of the First,
 15 Eighth and Fourteenth Amendments.³ (*Id.* at 8-9.) Plaintiff seeks damages and
 16 asks for the officers to be fired. (*Id.* at 6.)

17 III.

18 DISCUSSION

19 Each government official "is only liable for his or her own misconduct."
 20 *Iqbal*, 556 U.S. at 677. The complaint names only Sheriff Villanueva as a
 21 defendant. The complaint does not name the individual deputies who allegedly
 22 failed to protect Plaintiff and retaliated against him.

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 25 ³ It is unknown whether Plaintiff was a pretrial detainee whose claims
 26 would arise under the Fourteenth Amendment or a convicted prisoner whose
 27 claims would arise under the Eighth Amendment. The Cruel and Unusual Clause
 28 of the Eighth Amendment only protects convicted prisoners and does not apply to
 pretrial detainees. *Graham v. Connor*, 490 U.S. 386, 396 n.10 (1989); *Bell v.*
Wolfish, 441 U.S. 520, 535 (1961). If Plaintiff was a pretrial detainee, his claims
 arise under the Due Process Clause of the Fourteenth Amendment and are
 governed by different standards. See *Castro v. Cty. of Los Angeles*, 833 F.3d
 1060, 1067-68 (9th Cir. 2016) (en banc).

1 Supervisory officials are not liable under § 1983 for the actions of their
2 subordinates on any theory of vicarious liability. *Crowley v. Bannister*, 734 F.3d
3 967, 977 (9th Cir. 2013); *Hansen v. Black*, 885 F.2d 642, 645-46 (9th Cir. 1989).

4 A defendant may be held liable as a supervisor under § 1983 if there exists
5 either (1) personal involvement in the constitutional deprivation, or (2) a sufficient
6 causal connection between the supervisor's wrongful conduct and the
7 constitutional violation. *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011). The
8 causal connection may be established by setting in motion a series of acts by
9 others, or by knowingly refusing to terminate a series of acts by others, that the
10 supervisor knew or reasonably should have known would cause others to inflict a
11 constitutional injury. *Id.* at 1207–08. “A supervisor can be liable in his individual
12 capacity for his own culpable action or inaction in the training, supervision, or
13 control of his subordinates; for his acquiescence in the constitutional deprivation;
14 or for conduct that showed a reckless or callous indifference to the rights of
15 others.” *Id.* at 1208 (citation omitted).

16 A supervisory official may be liable in his individual capacity for failure to
17 train if the official “was deliberately indifferent to the need to train subordinates,
18 and the lack of training actually caused the constitutional harm or deprivation of
19 rights.” *Flores v. Cty. of Los Angeles*, 758 F.3d 1154, 1158-59 (9th Cir. 2014)
20 (noting same standard applies under *Monell* liability). A complaint must allege
21 facts indicating that the defendant “disregarded [the] known or obvious
22 consequences . . . that a particular omission in their training program [would
23 cause] . . . [] employees to violate citizens’ constitutional rights.” *Hyde v. City of*
24 *Willcox*, 23 F.4th 863, 874 (9th Cir. 2022) (internal quotation marks omitted).

25 The complaint does not allege any facts indicating that the training on
26 protective custody placement, retaliation, racial name-calling or any other subject
27 is defective. “An inadequate training policy itself cannot be inferred from a single
28 incident.” *Id.* at 875 & n.4; see also *Blankenship v. City of Orange*, 485 F.3d 463,

1 484-85 (9th Cir. 2007) (failure to train one officer insufficient to show program-
2 wide inadequacy of training).

3 In addition, the complaint does not allege that Sheriff Villanueva was put on
4 notice of a failure or inadequacy of training. In the context of *Monell* liability, the
5 Supreme Court has noted: “[I]t may happen that in light of the duties assigned to
6 specific officers or employees the need for more or different training is so
7 obvious, and the inadequacy so likely to result in the violation of constitutional
8 rights, that the policymakers of the city can reasonably be said to have been
9 deliberately indifferent to the need.” *City of Canton v. Harris*, 489 U.S. 378, 390
10 (1989) (footnote omitted). “That a particular officer may be unsatisfactorily
11 trained will not alone suffice to fasten liability on the city, for the officer’s
12 shortcomings may have resulted from factors other than a faulty training
13 program.” *Id.* at 390-91. “And plainly, adequately trained officers occasionally
14 make mistakes; the fact that they do says little about the training program or the
15 legal basis for holding the city liable.” *Id.* at 391.

16 The complaint does not allege facts as to (1) why Plaintiff believes he is
17 entitled to protective custody, (2) how Sheriff Villanueva was put on notice of
18 failure or inadequacy of training as to the availability of protective custody during
19 the Covid-19 pandemic or as to which inmates are placed in protective custody,
20 and (3) how the failure or inadequacy of training led to the constitutional violations
21 that Plaintiff suffered. *Starr*, 652 F.3d at 1209-12 (alleging facts such as Sheriff’s
22 notice of attacks on other inmates or notice of investigations into attacks).

23 To the extent Plaintiff seeks to impose liability on Sheriff Villanueva as a
24 supervisor for failure to place Plaintiff in protective custody, the complaint does
25 not allege sufficient facts. It is unclear whether Plaintiff alleges that the Sheriff
26 adopted a policy of suspending protective custody or making it unavailable. See
27 *Gordon v. Cty. of Orange*, 6 F.4th 961, 973 (9th Cir. 2021). (1) knew the facility
28 did not have protective custody available or did not place inmates like Plaintiff in

1 protective custody, (2) knew that general population posed a serious risk of harm
 2 to Plaintiff and placed him there anyway, and (3) acquiesced in a deficient policy
 3 that was the moving force behind that harm to Plaintiff. *Starr*, 652 F.3d at 1208.

4 It is unclear whether Plaintiff seeks to impose liability upon Sheriff
 5 Villanueva based on the individual deputies' retaliation or use of racial epithets.

6 Should Plaintiff choose to file a First Amended Complaint, Plaintiff should
 7 specify the claim or claims he is asserting against Sheriff Villanueva, and should
 8 clearly set forth the facts on which he bases liability in accordance with the legal
 9 guidelines set forth above. See *Iqbal*, 556 U.S. at 678.

10 IV.

11 ORDER

12 For the reasons discussed above, the Court DISMISSES the complaint
 13 with leave to amend.

14 Plaintiff shall have 30 days from entry of this order to file a First Amended
 15 Complaint that corrects the deficiencies described above. Failure to file a timely
 16 amended complaint that corrects the deficiencies will result in dismissal of the
 17 action on the merits or for failure to prosecute. Fed. R. Civ. P. 41(b).

18 If Plaintiff chooses to file a First Amended Complaint, it must bear the
 19 docket number assigned to this case, be labeled "First Amended Complaint," and
 20 be complete in and of itself without reference to the prior complaints,
 21 attachments, pleadings or other documents.

22 The Clerk is DIRECTED to provide Plaintiff with a blank Central District of
 23 California civil rights complaint form.

24 **IT IS SO ORDERED.**

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 26 DATED: February 27, 2023

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 OTIS D. WRIGHT II
 United States District Judge